

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. _____**

IN RE:)	
Lily Solar LLC,)	
)	
Complainant,)	COMPLAINT
vs.)	
)	
South Carolina Electric & Gas Company,)	
)	
Defendant.)	

INTRODUCTION

Lily Solar LLC, (hereinafter, “Lily Solar”, acting through its representatives), pursuant to R-103-824, of the South Carolina Code of Regulations of the Public Service Commission, and other applicable Statutes and Regulations, complains against South Carolina Electric & Gas Company (hereinafter, “SCE&G”), with appropriate Grounds, as follows:

COMPLAINANT/DEFENDANT

Lily Solar LLC.

Lily Solar is a South Carolina Limited Liability Corporation, duly organized and conducting business in the State of South Carolina, with its registered agent located in Greenville, South Carolina. National Renewable Energy Corporation (hereinafter, “NARENCO”) is the parent company of Lily Solar. Under the facts of this case, Lily Solar is an Interconnection Customer seeking Large Generator Interconnection service with SCE&G.

South Carolina Electric & Gas Company.

SCE&G is a South Carolina Corporation, duly organized and conducting business in the State of South Carolina. Under the facts of this case, SCE&G is a Transmission Provider.

COMPLAINT

1. Lily Solar, as an Interconnection Customer, proposes to develop and interconnect a Large Generating Facility, as defined by its nameplate capacity size under both FERC and SCE&G's Large Generator Interconnection Procedure, consistent with SCE&G's approved Open Access Transmission Tariff (hereinafter, "OATT"). Lily Solar submitted an Interconnection Request to SCE&G on or about February 16, 2015, to initiate the application process. Lily Solar, as the Interconnection Customer, sought interconnection service from its facility with SCE&G's Transmission System and was directed by SCE&G that the study process and agreements would follow SCE&G's Large Generator Interconnection Procedure in alignment with SCE&G's OATT.

2. Lily Solar, proposes a 70 MW Solar Large Generating Facility, with a physical "footprint" of over 625 acres. Lily Solar would provide a nominal economic impact of more than \$85 million of new capital investment sited in Allendale County, South Carolina. Lily Solar would be one of the first Large-Scale Solar Generating Facilities by an independent power producer in South Carolina seeking access to SCE&G's transmission system as a Large Generating Facility. Upon completion of construction, Lily Solar would provide significant discretionary property tax income to Allendale County, along with delivering on-peak power to serve South Carolina ratepayers when they need it the most.

3. Lily Solar was recently touted by Governor Nikki Haley in a press release dated January 27, 2016, as follows:

"NARENCO's investment in Allendale [County, South Carolina] is another example of a company seeing the opportunities being created by Team South Carolina's approach to creating a business-friendly environment that companies from any industry can thrive in. We're excited to welcome NARENCO to the South Carolina family, and to celebrate its \$85 million investment in our state and our people."

4. Lily Solar was also praised by Secretary of Commerce Bobby Hitt as follows:

"Team South Carolina works hard every day to cultivate a pro-business environment for companies of all types in our state, and this \$85 million solar project is further evidence that our team-first approach is paying off. I offer my congratulations to NARENCO on their decision to establish operations in Allendale County and look forward to watching them succeed there for many years to come."

5. Lily Solar was welcomed to Allendale County, South Carolina by Allendale County Council Chairman Mr. James Pinkney, as follows:

“Allendale County welcomes NARENCO and their solar project to our family of alternative energy companies in our region. We appreciate the company’s investment in our county, which will assist with tax revenue to fund county services to our residents. We also appreciate this effort to provide innovative solutions to our state’s energy needs.”

6. Lily Solar, as the Interconnection Customer and in compliance with SCE&G’s direction, timely submitted each interconnection agreement and financial deposit as required by SCE&G and in compliance with SCE&G’s Large Generator Interconnection Procedure, as directed by SCE&G, in seeking interconnection Service. . SCE&G communication to Lily Solar’s representatives references compliance under SCE&G’s OATT when tendering application agreements that also comport with OATT Large Generator Interconnection Procedure. Specifically, Lily Solar invested \$160,000, in deposits with SCE&G in connection with advancing its Interconnection Application over the course of more than ten months in seeking access to SCE&G’s transmission system.

7. Lily Solar also made an additional substantial financial investment in negotiating and executing a mutually acceptable Fee in Lieu of Taxes Agreement, (hereinafter, “FILOT”), with Allendale County, South Carolina with a 30 year term.

8. SCE&G communicated to Lily Solar’s representatives the contractual responsibilities and framework to obtain interconnection and how SCE&G would follow SCE&G’s Large Generator Interconnection Procedure in compliance with its OATT throughout the process. SCE&G, as the Interconnection Provider, has at all times relevant to this Complaint, offered (and Lily Solar accepted and complied with) Large Generator Interconnection Studies tendered by SCE&G inclusive of the deposits and timelines as directed and referenced by SCE&G, consistent with SCE&G’s Large Generator Interconnection Procedure as published under its OATT. Furthermore, SCE&G complied with the Large Generator study timelines and deposit framework in analyzing Lily Solar’s Interconnection Application as specified in their OATT. . More specifically, SCE&G indicated to Lily Solar representatives that it would follow SCE&G’s Large Generator Interconnection Procedures and tender a conforming Large Generator Interconnection Agreement as represented in SCE&G’s Large Generator Interconnection Procedure published under their Open Access Transmission Tariff.

9. After completion of the Large Generator Interconnection Studies, discussions between the parties, the passage of considerable time and after an exchange of electronic communications/documents, SCE&G inexplicably offered an inferior alternative to SCE&G's Large Generator Interconnection Agreement titled "Generator Interconnection Agreement", instead of an OATT compliant "Large Generator Interconnection Agreement" as agreed upon, understood, and paid for by Lily Solar. The Generator Interconnection Agreement offered by SCE&G is more consistent with a Small Generator Project (which would be 20 MW, or less), is inconsistent with the 70 MW Large Generating Facility envisioned by Lily Solar, lacks key commercial terms comparable to the Large Generator Interconnection Agreement and is materially different from the form of contract that was consistently mentioned by both parties in negotiations, prior to SCE&G's submission of the alternative Generator Interconnection Agreement. As such, SCE&G did not contractually perform its obligation to Lily Solar and Lily Solar should be afforded all of the rights and benefits that SCE&G's Large Generator Interconnection Agreement provides comporting with contract law.

10. At the Hearing in this matter, Lily Solar's representatives will produce electronic mail communications/documents, which will show that all of SCE&G's discussions, exchange of documents and deposits reference (i) SCE&G's Open Access Transmission Tariff (ii) a Large Generating Facility (iii) SCE&G's Large Generator Interconnection Procedure and (iv) SCE&G's Large Generator Interconnection Agreement, which taken together, constitute overwhelming evidence of an offer by SCE&G and an acceptance by Lily Solar, of the requirement for SCE&G to tender a Large Generator Interconnection Agreement in conformance with their OATT.

11. As stated, SCE&G offered and Lily Solar accepted, a Large Generator Interconnection Procedure as the contractual framework to obtain a Large Generator Interconnection Agreement, conforming with SCE&G's Large Generator Interconnection Procedure. Furthermore, Lily Solar detrimentally relied on SCE&G's Large Generator Interconnection offer. Finally, a legally enforceable contract obligation to provide an OATT compliant Large Generator Interconnection Agreement occurred upon SCE&G's offer and Lily Solar's acceptance.

12. SCE&G's improper offer of an alternative and inferior Generator Interconnection Agreement came after the tremendous financial investment and reliance by Lily Solar, in the Interconnection Process, in obtaining Lily Solar's mutually acceptable FILOT with Allendale County, and inclusive of advancing development of the proposed Large Generator. SCE&G's alternative Generator Interconnection Agreement places additional economic burden on Lily Solar which likely results in the project becoming uneconomic. If SCE&G were to succeed, the barriers of entry would likely result in lost economic investment for Allendale County and NARENCO.

13. Based on the facts set forth hereinabove, it is obvious that SCE&G has not acted in good faith in its negotiations with Lily Solar. SCE&G is under specific order from this Commission to negotiate in good faith in its purchase of electrical energy. See, on page 26 of Commission Order 85-347, dated August 2, 1985, Docket No.: 80-251-E. Further this Commission has encouraged that, in circumstances where agreement cannot be reached, for the aggrieved party to present the issue for resolution before this Commission, by way of a formal Complaint. See, on page 28 of Commission Order 85-347, dated August 2, 1985, Docket No.: 80-251-E. It is understood that the Orders of this Commission continue in force, until further order of this Commission.

14. Lily Solar LLC is represented by counsel in this proceeding:

Richard L. Whitt
AUSTIN & ROGERS, P.A.
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
Telephone: (803) 251-7442
Facsimile: (803) 252-3679

CONCLUSION

Based on the foregoing, and because of SCE&G's offer of an OATT conforming Large Generator Interconnection Agreement and Lily Solar's acceptance of an OATT conforming Large Generator Interconnection Agreement, and Lily Solar's reliance on SCE&G, this Commission should order SCE&G to perform as promised and order SCE&G to offer Lily Solar, a Large Generator Interconnection Agreement, conforming with SCE&G's offer and SCE&G's Large Generator Interconnection Procedure as published within their OATT.

WHEREFORE, Complainant prays for the following relief:

- (a) That SCE&G should be ordered to provide a conforming, Large Generator Interconnection Agreement to Lily Solar in alignment with SCE&G's OATT, for its execution;
- (b) That this Commission's decision should restore Lily Solar *nunc pro tunc* to its Contract position at the time of SCE&G's improper offer on or about January 14, 2016;
- (c) That Lily Solar's position in SCE&G's queue be restored;
- (d) That Lily Solar's contractual rights in this matter, be restored and made whole, consistent with the facts of this case; and
- (e) For such other and further relief as is just and proper.

Respectfully Submitted,
/S/

Richard L. Whitt
RLWhitt@AustinRogersPA.com
AUSTIN & ROGERS, P.A.
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 251-7442
Attorney for Lily Solar LLC

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Columbia, South Carolina